

Mr. Abe Williams

Nuna Resources Inc.

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Anchorage, AK 99522

Dear Mr. Williams:

Deputy Administrator Perciasepe asked me to respond to your letter of February 28, regarding the Bristol Bay Watershed Assessment. I know that Mr. Perciasepe appreciated the opportunity to meet with you and Ms. Riemers on February 8. We remain interested in hearing from you and others as we complete our watershed assessment. You raised several questions and concerns which I am responding to in this letter.

You requested that we provide “the EPA regulations that you are using to define the public process that we are enmeshed in now for the 404(c) request and the watershed study.” As we have noted on numerous occasions, EPA has not initiated a 404(c) action in the Bristol Bay. As you know, since 2010 Nine Bristol Bay Tribes, the Bristol Bay Native Corporation, and other tribal organizations and many groups and individuals requested that EPA use its Clean Water Act (CWA) Section 404(c) authority to stop the proposed Pebble Mine. In contrast, two tribes, other tribal organizations including your organization, the Governor of Alaska, and other groups and individuals, including the Pebble Limited Partnership, requested that EPA let the standard National Environmental Policy Act/CWA Section 404 review process proceed. As we have discussed with you on numerous occasions, EPA launched its Bristol Bay Assessment in order to provide us with a scientific basis on which to respond to these two sets of competing requests.

~~governing the public process for the 404(c) request and the watershed study. The regulations regarding Section 404(c) of the Clean Water Act can be found at~~ [http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c\\_index.cfm](http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c_index.cfm). EPA’s Bristol Bay Watershed Assessment is not a regulatory action. As such, there are no public process requirements defined ~~inby~~ the regulations. The watershed assessment is being done by EPA ~~for~~ EPA, to better understand the current information about the Nushagak and Kvichak watersheds and evaluate potential risks from large-scale mining in these watersheds.

Even though there are no requirements for public participation, EPA has committed to conduct our assessment in an open, transparent and collaborative process incorporating numerous opportunities for federal, state, tribal and public input. ~~a public process side-by-side~~

~~with our scientific process and incorporate opportunities for public input into the watershed assessment. We have requested information regarding the Bristol Bay watershed (specifically the Nushagak and Kvichak watersheds) from the public, posted documents about the watershed assessment on our website, met with members of Tribal governments and local communities, and convened an Intergovernmental Technical Team early in the process to include input from federal and state agencies, as well as Tribal government representatives. We will also release the watershed assessment for public review, as well as submit it for scientific peer review. We have requested nominations of independent qualified scientists from the public to be considered for the peer review panel; we will be soliciting public input on the charge to the peer review panel; we will be conducting a series of public outreach meetings on the draft Assessment during the public comment period in May 2010 in Anchorage as well as additional locations in the Bristol Bay region; and we will have opportunities for public comment during the peer review meeting currently scheduled for August 2012.~~ These actions go well beyond our usual process for development of a scientific assessment for EPA use, but we feel the level of interest in this issue warrants the extra effort.

You suggested that we have only listened to proponents of ~~the a~~ 404(c) action. That is clearly not the case. There are many individuals and groups that have a strong interest in the Bristol Bay Watershed Assessment. We have met with and listened to concerns of representatives from Tribal governments, Alaska Native Corporations, environmental groups, and industry. You requested that we provide your non-profit organization more deference than other entities interested in the Watershed Assessment. We remain committed to hearing diverse perspectives and conducting an inclusive process, as well as fulfilling our responsibilities to engage Tribal governments in government –to-government consultation, and will not give deference to a specific organization.

~~Your letter also includes a request for information and communications related to asked that we have full transparency about the origins of the various 404(c) requests submitted to EPA. Specifically, you requested copies all such requests as well as all communications between EPA personnel (and consultants) related to the 404(c) requests including communications sent before and after submissions of 404(c) related requests. Nine Bristol Bay Tribes, Bristol Bay Native Corporation, and other tribal organizations and many groups and individuals have asked EPA to use our authority under Section 404(c) of the Clean Water Act to restrict or prohibit mining activities in the watersheds of Bristol Bay. Two Bristol Bay Tribes, other tribal organizations, the Governor of Alaska, Pebble Limited Partnership and other individuals and groups asked us to let the standard NEPA/404 review process proceed. After considering both of these requests, EPA decided to conduct a watershed assessment to provide us with a scientific basis on which to respond to these requests. All such cCorrespondence including all requests of all nature from all of these organizations and individuals is quite voluminous. For example, requests from those who have asked that EPA take action under 404(c) is voluminouscurrently number in the thousands. and will be part of the public record~~ Providing you with copies of all of this material is

beyond the scope of this request. Requests for material of this volume and scope are typically handled via a request made pursuant to the Freedom of Information Act (FOIA). For more information regarding how to submit a FOIA request see: [insert info re R10 FOIA office]...

***Should we mention the ability to FOIA this information?***

You expressed concerns that our watershed assessment is not a field study which is generating new information. We have been clear ~~from since~~ the beginning of the ~~process~~ assessment effort that we are not collecting additional information in the field, with the exception of interviews with Tribal elders and culture bearers. The watershed assessment will ~~focus on pulling together~~ compile and examine a considerable amount of existing information regarding the Nushagak and Kvichak watersheds and evaluate how ~~looking at~~ potential future large-scale mining may affect the salmon fishery ~~effects on salmon resources from potential large-scale mining of existing mineral resources~~. As you have suggested, we will be assuming that any mining in the region will use up-to-date mining practices. Consistent with your request, we are looking at other mines in the Fraser River watershed and elsewhere to learn from other operating mines.

Your letter also raised questions regarding why EPA framed its assessment around the Bristol Bay's fishery resources. As you know, the focus of the assessment is to evaluate the potential impacts on the salmon fishery as well as any associated impacts on wildlife and human health and welfare if the salmon fishery is impacted. EPA framed its assessment this way because requests to EPA to take action in the watershed focused largely on concerns that the watershed's subsistence, commercial and sport fishery (particularly its salmon fishery) could be adversely impacted by future large-scale mining. The importance of the Bristol Bay's subsistence, commercial and sport fishery is well publicized<sup>1</sup>. Similarly, information regarding potential large-scale mining in the subject watersheds is also well publicized<sup>2</sup>. EPA's assessment will help EPA determine what action, if any, is appropriate to take at this time based on the extent of available information. ~~The reason we are focused on the fishery, as you have noted, is that the Clean Water Act specifically authorizes EPA to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. The scope of our assessment, which we shared publically for many months, is the fishery and potential impacts to wildlife and human welfare through the fishery from large-scale mining in the Nushagak and Kvichak watersheds.~~

You expressed concern that EPA is using our discretion on what information is used in the watershed assessment. It is our responsibility to make sure that information used in the assessment is scientifically sound and well-referenced so that we produce a high quality

<sup>1</sup> [can we insert some links to online references that discuss the value of the BB's subsistence, commercial and sport fishery (e.g., state sites or other government agency sites)]

<sup>2</sup> [can we insert links to the PLP and NDM websites?]

watershed assessment and therefore we are using some discretion about the information and data in our assessment. However, we continue to welcome scientific information about the watershed from any and all sources and will continue to consider new information as it becomes available. In addition, we will be providing our draft report for both public and scientific peer review, which we hope will result in recommendations for improvement.

Regarding our schedule, we remain committed to releasing our draft assessment report this spring and holding public meetings prior to the fishing season. Our peer review meeting will be scheduled in August. We have been clear about this schedule has been publicly available since last summer for some time so members of the public and interested organizations could plan for their review of the document.

We value your perspective and input and look forward to your continued participation in the assessment effort. If you have any specific questions about the assessment, please contact Mr. Rick Parkin, who is the EPA's lead coordinator for the watershed assessment at (206)553-8574. Thank you again for taking the time to meet with us and share your concerns.

Sincerely,

Dennis...